

time payment (*see* paragraph (c) of this section).

(c) *Nonrecurrent payments.* In the case of wages, salary or other income paid to the taxpayer on a one-time basis, the taxpayer's payroll period is deemed to be weekly (*i.e.*, the 1-week period ending on the day of payment).

(26 U.S.C. 6334)

§ 70.245 Computation of exempt amount and payment of amounts not exempt from levy to the appropriate TTB officer.

(a) *General.* Unless advised by the appropriate TTB officer that no part of the money due to the taxpayer is exempt from levy, the employer or other person levied upon will compute the exempt amount, using the formula in § 70.243 of this part and the taxpayer's statement of exemptions and filing status described in paragraph (b) of this section.

(b) *Statement of exemptions and filing status.* Unless the taxpayer submits a statement of exemptions and filing status to the employer or other person levied upon, the exempt amount will be applied as if the taxpayer were a married individual filing a separate return with only 1 personal exemption. A statement of exemptions and filing status shall be made by either:

(1) Completion of the form provided for this purpose by the Bureau, or

(2) A written statement that:

(i) Gives the taxpayer's filing status for income tax purposes,

(ii) Shows any additional standard deduction if the taxpayer or the taxpayer's spouse is at least 65 and/or blind,

(iii) Identified by name and by relationship to the taxpayer each person for whom a dependent exemption is claimed,

(iv) Is signed by the taxpayer, and

(v) Contains a declaration that it is made under the penalties of perjury.

(c) *Time for submission of statement.* The taxpayer must submit the statement of exemptions and filing status to the employer or other person levied upon no later than the later of:

(1) The third day before the last day of the payroll period for which the exemption is claimed (that is, the third day before payday), or

(2) If the appropriate TTB officer delivers the forms for the statement of exemption and filing status to the employer or other person levied upon (*see* § 70.242(c)(2) of this part), the second day after the date the taxpayer receives the form.

For purposes of paragraphs (c) (1) and (2) of this section, the term "day" does not include Saturdays, Sunday or a legal holiday within the meaning of 26 U.S.C. 7503. Failure on the part of the taxpayer to submit a timely statement of exemptions and filing status will result in the computation of the exempt amount as if the taxpayer were a married individual filing a separate return with only 1 personal exemption for the applicable pay period, except that the employer or other person levied upon may accept a statement of exemptions and filing status not timely submitted in accordance with this paragraph, and may prepare a disbursement to the taxpayer based upon the information properly verified therein, if payment to the appropriate TTB officer in accordance with the levy is not thereby delayed.

(d) *Payment of amounts not exempt from levy to the appropriate TTB officer—*

(1) *In General.* Wages, Salary, or other income the subject of a levy are payable to the appropriate TTB officer on the date the payor is otherwise obligated to pay the taxpayer (*see* § 70.242(c) of this part).

(2) *Delayed payment in certain cases.* If, however, as described in paragraph (c)(2) of this section, the taxpayer may submit a statement of exemptions and filing status after the third day before payday, amounts payable to the taxpayer on that payday, to the extent not exempt from levy, are payable to the appropriate TTB officer on the third day following the date on which the taxpayer may timely submit the statement of exemptions and filing status under paragraph (c)(2) of this section. For purposes of this rule, the term "day" does not include Saturday, Sunday or a legal holiday within the meaning of 26 U.S.C. 7503.

(26 U.S.C. 6334)

§ 70.251

27 CFR Ch. I (4-1-08 Edition)

Periods of Limitation in Judicial Proceedings

§ 70.251 Periods of limitation on suits by taxpayers.

(a) No suit or proceeding under section 7422(a) of the Internal Revenue Code for the recovery of any internal revenue tax, penalty, or other sum shall be begun until whichever of the following first occurs:

(1) The expiration of 6 months from the date of the filing of the claim for credit or refund, or

(2) A decision is rendered on such claim prior to the expiration of 6 months after the filing thereof. Except as provided in paragraph (b) of this section, no suit or proceeding for the recovery of any tax, penalty, or other sum imposed under the provision of 26 U.S.C. enforced and administered by the Bureau may be brought after the expiration of 2 years from the date of mailing, by either registered or certified mail, by an appropriate TTB officer, to a taxpayer of a statutory notice of disallowance of the part of the claim to which the suit or proceeding relates.

(b) The 2-year period described in paragraph (a) of this section may be extended if an agreement to extend the running of the period of limitations is executed. The agreement must be signed by the taxpayer or by an attorney, agent, trustee, or other fiduciary on behalf of the taxpayer. If the agreement is signed by a person other than the taxpayer, it shall be accompanied by an authenticated copy of the power of attorney or other legal evidence of the authority of such person to act on behalf of the taxpayer. If the taxpayer is a corporation, the agreement should be signed with the corporate name followed by the signature of a duly authorized officer of the corporation. The agreement will not be effective until signed by an appropriate officer.

(c) The taxpayer may sign a waiver of the requirement that the taxpayer be mailed a notice of disallowance. Such waiver is irrevocable and will commence the running of the 2-year period described in paragraph (a) of this section on the date the waiver is filed. The waiver shall set forth:

(1) The type of tax and the taxable period covered by the taxpayer's claim for refund;

(2) The amount of the claim;

(3) The amount of the claim disallowed;

(4) A statement that the taxpayer agrees the filing of the waiver will commence the running of the 2-year period provided for in section 6532(a)(1) as if a notice of disallowance had been sent the taxpayer by either registered or certified mail.

The filing of such a waiver prior to the expiration of 6 months from the date the claim was filed does not permit the filing of a suit for refund prior to the time specified in section 6532(a)(1) and paragraph (a) of this section.

(d) Any consideration, reconsideration, or other action with respect to a claim after the mailing, by either registered or certified mail, of a notice of disallowance or after the execution of a waiver referred to in paragraph (c) of this section, shall not extend the period for bringing suit or other proceeding under section 7422(a) of the Internal Revenue Code.

(26 U.S.C. 6532)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated and amended by T.D. ATF-301, 55 FR 47606, 47648, Nov. 14, 1990]

§ 70.252 Periods of limitation on suits by the United States.

The United States may not recover any erroneous refund by civil action under section 7405 of the Internal Revenue Code unless such action is begun within 2 years after the making of such refund. However, if any part of the refund was induced by fraud or misrepresentation of a material fact, the action to recover the erroneous refund may be brought at any time within 5 years from the date the refund was made.

(26 U.S.C. 6532)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§ 70.253 Periods of limitation on suits by persons other than taxpayers.

(a) *General rule.* No suit or proceeding, except as otherwise provided in 26 U.S.C. 6532(c)(2) and paragraph (b) of this section, under 26 U.S.C. 7426 and